

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

LUIS SALINAS,

Plaintiff,

vs.

DEPARTMENT OF LABOR OSHA,

Defendant.

8:23CV413

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiff's "Motion to Dismiss Without Prejudice and Continue Subpoena," which the Court construes as a motion to dismiss pursuant to [Federal Rule of Civil Procedure 41](#). [Filing No. 13](#). [Rule 41\(a\)](#) states that a plaintiff may dismiss an action without a court order by filing "a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." [Fed. R. Civ. P. 41\(a\)\(1\)\(A\)\(i\)](#). In addition, [Rule 41\(a\)\(2\)](#) provides that an action may be dismissed at the plaintiff's request "on terms that the court considers proper." [Fed. R. Civ. P. 41\(a\)\(2\)](#). Here, Plaintiff asks the Court to dismiss this action and Defendant has not been served with process. Accordingly, the Court will grant Plaintiff's request to dismiss this action without prejudice.

In his motion, Plaintiff also "requests that any subpoena granted (or, that would be granted) due to the Defendant's failure to respond in this filing be continued in effect or reinstated upon refiling of the case." [Filing No. 13 at 2](#), ¶ 4. The Court has not ruled on Plaintiff's previous motions regarding issuance of a subpoena, see [Filing No. 7](#); [Filing No. 7-3](#); [Filing No. 8](#), and the Court will deny such motions as moot without making any determination as to whether a subpoena should issue. As this case is

dismissed without prejudice at Plaintiff's request, Plaintiff is free to refile his claims as well as seek issuance of any subpoenas upon refiling.

IT IS THEREFORE ORDERED that:

1. Plaintiff's request for dismissal of this action, [Filing No. 13](#), is granted.

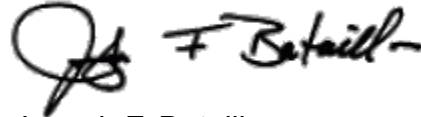
This matter is dismissed without prejudice.

2. Plaintiff's pending motions, [Filing No. 6](#); [Filing No. 7](#); [Filing No. 8](#); [Filing No. 9](#); [Filing No. 10](#); [Filing No. 11](#); [Filing No. 12](#), are denied as moot.

3. A separate judgment will be entered in accordance with this Memorandum and Order.

Dated this 18th day of July, 2024.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J F Bataillon", with a stylized flourish at the end.

Joseph F. Bataillon
Senior United States District Judge